

**(1996) 03 MAD CK 0074**

**In the Madras High Court**

**Case No :** Tax Cases No's. 630 to 632 of 1983

Commissioner of Income Tax

APPELLANT

Vs

Silver Cloud Forest and Plantations

RESPONDENT

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**Date of Decision :** 07-03-1996

**Acts Referred:**

Income Tax Act, 1961 — Section 256(2), 28

**Citation :** (1998) 231 ITR 671

**Hon'ble Judges :** N.V. Balasubramanian, J; K.A. Thanikkachalam, J

**Bench :** Division Bench

**Advocate :** Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

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## **Judgement**

K.A. Thanikkachalam, J.—In pursuance of the order passed by this court, dated April 20, 1982, the Tribunal referred the following

common question for the assessment years 1974-75, 1975-76 and 1976-77 for the opinion of this court, u/s 256(2) of the Income Tax Act, 1961

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Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the amount received on the sale of

bamboo is only a capital receipt and hence the same is not assessable to tax as revenue receipt ?

2. The assessee is a registered firm running a coffee and tea estate in which there were also shade trees, such as bamboos and silver oaks. Permits

were issued for the removal of the bamboos. According to the said permits only dead and flowered bamboos alone can be removed. The assessee

was also periodically cutting live bamboos and selling them, the income from which was subjected to tax in the earlier years. The contention of the

assessee was that for the assessment years 1974-75 and 1975-76, the bamboos which were removed at the roots could not give rise to an income

as the sale proceeds would constitute only capital gains, not liable to tax. The Income Tax Officer was of the view that the sale of the bamboos cut

and sold by the assessee could be of revenue nature and, therefore, liable to Income Tax. The Commissioner of Income Tax, on appeal after going

through the facts in detail, came to the conclusion that the assessee used to cut the dead and flowered bamboos, along with the bamboos grown to

their optimum size. The Commissioner of Income Tax also verified the permits granted to the assessee for cutting and removing only the dead and

flowered bamboos. But in the present assessment year under consideration, the assessee removed only the dead and the flowered bamboos and

sold them. The sale proceeds of the dead and flowered bamboos is the subject-matter in the appeals before the Commissioner of Income Tax. He

held that the income from such sale was different from the income earned by the periodical cutting of live bamboos; the former would be a capital

receipt, whereas the latter would be a revenue receipt. The Commissioner of Income Tax also relied upon the decision of the Supreme Court in

A.K.T.K.M. Vishnudatta Andharjanam represented by D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural Income Tax,

Trivandrum, . Accordingly, the sale proceeds of dead and flowered bamboos were not taxed as capital receipt. On appeal, the Appellate Tribunal

accepted the order passed by the Commissioner of Income Tax.

3. Before us, learned standing counsel appearing for the Department, submitted that the systematic exploitation of live bamboo clumps involves the

cutting of the bamboos on their reaching the stage of optimum growth, leaving behind about a third of the length, which continues growing and

repeating this process periodically till the clumps die. When this happens the dead and flowered bamboos have to be uprooted from inhibiting the

growth of live bamboo clumps in the surrounding areas. According to learned standing counsel, the removal of the dead and flowered bamboos

and the sale proceeds of the same would also amount to revenue in nature, taxable under the Income Tax Act, 1961. However, counsel for the

assessee submitted that the sale proceeds of the cutting of the periodical growth of the bamboos when they reached their optimum growth, was

offered to tax as revenue receipt, but the sale proceeds of the dead and flowered bamboos were not offered for tax, since they are capital in

nature. According to learned counsel, in the present assessment years under consideration, there is no sale of bamboos, which were cut when they

reached their optimum growth. Since the dead and flowered bamboos were removed once for all, the sale proceeds of the same would be capital

in nature. In *A.K.T.K.M. Vishnudatta Andharjanam* represented by *D.V. Nambudripad Desamangalam Vs. The Commissioner of Agricultural*

*Income Tax, Trivandrum*, the Supreme Court held that the sale of the trees affected the capital structure, because by removing the roots the

source from which fresh growth of trees could take place was removed, and the sale could not, therefore, give rise to a revenue receipt. The

receipt from the sale of the teak trees was capital in nature. Since, according to the facts arising in the present case, the sale proceeds consisting of

the sale of dead and flowered bamboos, which were removed once for all, it cannot be considered as revenue in nature. As per the decision of the

Supreme Court cited *supra*, the sale proceeds of the dead and flowered bamboos would only be in the nature of capital receipt. Accordingly, we

answer the question referred to us in the affirmative and against the Department. No costs.